

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1288 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUNILKUMAR GURUMUKHDAS CHAVLANI

Versus

DISTRICT MAGISTRATE & ORS.

Appearance:

Mr.Y.S.LAKHANI, for Petitioner

MR. L.R.POOJARI, A.G.P. for Respondent No.1, 2 & 4

MR. SUNIL C. PATEL, for respondent No.3 - Central Government

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/04/97

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner has brought under challenge the impugned order of detention dated 21st January 1997 passed by respondent No.1.

2. It has been recited in the grounds of detention

dated 23rd January 1997 that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supply of commodities essential to the community it became necessary to preventively detain the petitioner under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'the Act'), the petitioner, being in management of the concern in the name and style of "Govinda Provision Stores" dealing in retail grains and grossery business and the business of white free sale kerosene and helping his father, who is proprietor of Mukesh Provision Stores, carrying on business of distributing licensed blue kerosene as retail licence holder at the same place of business. It has been asserted that retail licence No. 56/81 was granted in favour of Mukesh Provision Stores and the petitioner has been assisting his father being the proprietor of Mukesh Provision Stores, in the retail business of kerosene. It has also been recited that inquiry was made on 16th January 1997 in the presence of panchas at the Mukesh Provision Stores owned by the petitioner's father and number of irregularities stated in the grounds of detention were noticed. It has inter-alia been recited in the grounds of detention in Para : 4(4) thereof that the petitioner's brother had given his statement on 16.1.1997 before the Supply officer stating that no purchase of white kerosene was made after 20.9.1995. It has then been recited that inspite of the fact that no such purchase was made the petitioner had prepared bills of sale of white kerosene in the name of Shri Ashok Products, C/16/17, Sardar Industrial Estate, Ajava Road, Vadodara. Such bills were prepared for Govind Provision Stores. Accordingly during the period between 1.4.1996 to 18.4.1996 the stock of 19805 ltrs. of kerosene was sold to said Shri Ashok Products under the bills for the said period. This fact was noticed in the inquiry of the said Ashok Products Factory. On being asked how such stock of white kerosene was sold, the petitioner informed that some stock was obtained from Mahavir Petroleum, Makarpura without bill and some stock was arranged by his brother Rajkumar Chavhani for the same being sold to Ashok Products and retail consumers. On ascertainment of such facts from Mahavir Petroleum, Makarpura it was found that the said concern did not sell such stock of white kerosene either under bill or without bill and, therefore, the petitioner's explanation was not satisfactory and acceptable since the petitioner was carrying on business of white kerosene along with his father's business of licensed blue kerosene. Accordingly the petitioner carried on anti-social activity of Black marketing stock of 19805 ltrs. of kerosene by depriving

the concerned card holder consumers of their required supply of such blue kerosene. Thus, the Detaining Authority has referred to the sale bills of Govinda Provision stores issued to Shri Ashok Products between 1.4.1996 to 18.4.1996 for the total stock of 19805 ltrs. of kerosene for coming to the conclusion that such bills were issued for carrying on the anti-social activity of black marketing the licensed blue kerosene from his father's shop in the name of Mukesh Stores and thereby depriving the retail consumers of their required stock of blue kerosene under the cards held by them. It has, therefore, been concluded that the petitioner has committed breach of the provision of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and the Gujarat Essential Articles (Dealers Regulation) Order, 1977 and the Kerosene (Restriction of Use and Fixation of Selling Price) Order, 1993.

3. In respect of this ground of detention appearing in the grounds of detention the petitioner has contended in Para : (d) as under :

- (d) It is submitted that the detaining authority has held enquiry at the Ashok Products Factory and from that enquiry the authority found that the petitioner has sold white free sale kerosene to the Ashok Product Factory. Allegations to this effect are made in Para - 4(4) of the order of detention. It is respectfully submitted that not a single document has been supplied to the petitioner with the compilation with regard to the enquiry made at Ashok Product. It violates the fundamental right of the present petitioner to make an effective representation before the authorities, guaranteed under Article 22 of the Constitution of India and therefore also the impugned order of detention is required to be quashed and set aside."

In support of the aforesaid ground of challenge against the continued detention under the impugned order of detention reference has first been made to a decision of the Apex Court in the case of Virendra V/s. State of Maharashtra reported in AIR 1981 SC 1909, holding that the documents and the material forming basis of the order of detention, if not supplied to the detenu along with

the order of detention, the order would be rendered void as held in Smt. Ichhu Devi Choraria V/s. Union of India, reported in AIR 1980 SC 1983 and in Smt. Shalini Soni V/s. Union of India, reported in AIR 1981 SC 431. Reliance has also been placed on Kiritkumar V/s. Union of India, reported in AIR 1981 SC 1621.

4. It has further been submitted that in the present case the concerned authorities have violated the provisions of the very statute, namely, section 8(1) of the Act. The provision would read as under :-

"8. Grounds of order of detention to be disclosed to person affected by the order - (1) when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government."

5. In reply, it has been submitted by Mr.L.R.Poojari, learned A.G.P. that there is merely a passing reference to the documents in the form of bills and these documents have not been relied upon by the Detaining Authority. According to his submission this only the list of the bills as per inquiry held at Ashok Products is relied upon. In my opinion this submission can not be accepted as on a bare reading of the aforesaid grounds of detention it clearly appears that the detaining Authority has relied upon the material in the form of the report of inquiry annexing therewith the bills and other papers of the inquiry for coming to the conclusion that the petitioner has diverted licensed blue kerosene from his father's shop by issuing bills in the name of Mukesh Stores as free white kerosene and has thereby committed the act of black marketing depriving the legitimate card holders of the licensed blue kerosene meant for them. It has also been submitted by Mr.Poojari that the list narrating the particulars of the bills has been supplied. However, that would indicate that specific reliance was placed upon the documents described in the list. Hence, non supply of such document and materials along with the order of detention would vitiate the continued detention as complained of by the petitioner in the aforesaid ground of challenge.

6. Since the petitioner would succeed on the aforesaid ground of challenge against the continued detention under the impugned order of detention, it would not be necessary to deal with the other grounds of challenge as set out in the petition.

7. Following order is, therefore, passed :

The continued detention under the impugned order of detention in so far as the present petitioner is concerned is held to be illegal. The same is quashed and set aside. The petitioner - detenu - Sunilkumar Gurumukhdas Chavhani shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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